

OLC 78-0399/109

16 August 1978

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MEMORANDUM FOR THE RECORD

SUBJECT: 3 August 1978 Intelligence Charter Legislation Hearing

1. On 3 August 1978 the undersigned attended an intelligence charter legislation (S. 2525) hearing at which the following individuals testified:

- a. General Samuel Wilson, former Director, DIA
- b. General Russel Dougherty, former Chief, Strategic Air Command, and
- c. Admiral Elmo Zumwalt, former Chief of Naval Operations

Senator Goldwater (R., Ariz.), Vice Chairman of the Committee, presided. Other Senators at the hearing were Senators Huddleston (D., Ky.), Chafee (R., R. I.) and Wallop (R., Wyo.)

2. Overall, while Generals Wilson and Dougherty were supportive of the legislation, urging the Committee to look further into the need for improvements in the national-tactical intelligence arena, Admiral Zumwalt was decidedly negative with regard to the very idea of intelligence charter legislation.

3. General Wilson made the following points:

--With 30 years of intelligence experience behind us, intelligence charter legislation at this time would be both timely and helpful.

--From the standpoint of cost and quality of intelligence, the reporting requirements of S. 2525 must be reviewed with a view to simplifying and trimming them down.

--The reporting requirements evoke security questions in view of the proliferation of sensitive intelligence information that will result therefrom.

--In addition extensive reporting requirements may tend to "put Congress in the position of practically running the intelligence as opposed to providing the legislative basis and subsequent oversight."

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--Stressing that charter legislation is a very healthy development, General Wilson urged that in order for intelligence to be able to respond to very real and immediate problems and threats to the national security, legislation should not in any way "hamstring our flexibility to respond to the intelligence requirements which emerge from the existence of these separate, largely non-military problems."

4. General Dougherty, in turn, emphasized the following matters:

--Stressing what he called a "great contradiction" between constitutional privileges and guarantees, on the one hand, and the "real world of intelligence collection, particularly covert intelligence collection," General Dougherty complimented the staff and Committee for synthesizing years of experience into what he called a "workable charter" and a "[proper balance of] what must be done and the environment in which it must be done with the constraints that must be placed on us as American instrumentalities."

--General Dougherty stressed that based on his personal experience there is in fact a very real operational side to the issue of the interface between national-tactical intelligence; in this regard he urged the Committee to seriously consider giving the Chairman of the Joint Chiefs of Staff a "more formalized role, a more institutionalized role" in the intelligence process.

--While supportive of the congressional oversight role, he opined that a joint committee might be better from "the point of view of administration and military activities."

--In closing, General Dougherty cautioned that reporting requirements not inhibit the essential production of intelligence, particularly of a covert nature.

5. Admiral Zumwalt offered the following comments:

--Couching his comments in terms of the U.S. military decline and increasing conventional and nuclear superiority of the Russians as well as their global misbehavior and the successes of the KGB worldwide, Admiral Zumwalt characterized S. 2525 as a retroactive reaction to Watergate and the transgressions of that era, which legislation may well prevent the abuses of the past but which makes it much likelier that the U.S. "will become engaged in a war in the future."

--Admiral Zumwalt queried whether in view of Soviet military and covert intelligence capabilities "this bill is germane to the major problem which the U.S. faces."

--Zumwalt was particularly critical of the Carter Administration's strong dedication to Christian ethic and morality at the cost of not being adequately attuned and perhaps somewhat naive to Soviet misbehavior.

--While the Administration is now awakening to the problems, in Admiral Zumwalt's view the only way, short of war, to come to grips with Soviet misbehavior is to "put together a combination of overt political and covert actions designed to stem this tide while rearming to regain equality from which to negotiate more balanced arrangements."

--In Admiral Zumwalt's view the best possible action for the Senate to take vis-a-vis S. 2525 is "no action" with a view toward allowing more time to debate the issue of "how badly we are going to need the [intelligence] capability that [S. 2525] proposes to exorcise."

--If on the other hand, the Senate decides to move forward with the bill, Admiral Zumwalt made the following recommendations:

- a. better care must be taken to protect the sanctity of sources and techniques in the intelligence arena;

- b. the detailed reporting requirements negate covert activity, which actively will be greatly needed in the future; accordingly, no prohibition on specified covert activities should be included in the bill;

- c. the Chairman of the Joint Chiefs of Staff and the Secretary of Defense should be made members of the NSC Special Coordinating Committee (SCC);

- d. The Congress must provide in the legislation some means of ensuring the accuracy of intelligence reporting to prevent the misuse of intelligence analyses for purposes of political improvements of an Administration's position.

6. The focus of the questioning by the Senators was as follows:

--Senator Huddleston indicated that the Committee has been concerned with the question of the interplay between tactical and national intelligence and asked if the witnesses in their tactical command roles ever felt shut off from national intelligence which did not get to the commander because someone decided it was not applicable to the tactical situation. General Wilson responded that the process of getting national intelligence to the tactical level could be reworked to better answer the needs of the commander

at the Unified and Specified Command level and that enhancing the DCI's budget and program control would be a positive step in the right direction. General Dougherty indicated that in his opinion as close to real time-unevaluated intelligence would be helpful at the tactical level to the point that it would allow the tactical commander to "posture his forces or to increase his degree of readiness, not in a provocative sense, but in a prudent sense, while he is waiting for the evaluation." (Admiral Zumwalt was not present to respond; he arrived late.)

--Senator Huddleston, directing the next question to General Wilson, asked how the day-to-day operations of DIA would be changed by the bill as it is. General Wilson said DIA is in the precarious position of being tasked by both the Secretary of Defense and the Chairman, JCS, on the one hand, and the DCI or DNI on the other; according to General Wilson, if the supervisory line of the DCI or DNI is strengthened the day-to-day operations of DIA could be affected in that the DCI or DNI may collide with the Secretary of Defense or JCS Chairman in their dealings with DIA.

--Senator Goldwater began his questioning by commenting on the latest Agee affair and by indicating that he was personally writing to the Attorney General to see what steps can be taken to deny Mr. Agee his U.S. citizenship.

--Senator Goldwater then asked at what point in any crisis situation intelligence agencies would turn things over directly to the military and the military take over intelligence. In responding, General Dougherty stated that he found subsection 133(c) of Title I somewhat restrictive and said that it might lead to an unfortunate underutilization of military forces and military intelligence activities. General Wilson said that such a decision is a Presidential responsibility but praised former DCI Bush for his handling of two crises, evacuations of Americans from Beirut and [redacted]. In each, DCI Bush placed CIA people under the control of the Director, DIA, to support a Pentagon task force at the point where the situation became a military problem.

--Senator Chafee asked the views of the witnesses with regard to the Team A/Team B concept. The Senator couched his question in terms of the opinion of many who feel that the NIE's have underestimated Soviet strategic buildup. All three witnesses agreed that the Team A/Team B concept is a serious and valuable exercise. General Dougherty opined that S. 2525 could serve as a vehicle for making Congress itself the "second Team" on intelligence matters, especially "special activities." Senator Chafee reacted to General Dougherty's comments by stating that, in his opinion, such an arrangement would not be feasible, expressing doubts that any secret in the Federal Government could be kept as the group of people exposed to it expands.

--Senator Wallop began his questioning by commenting first that he does not agree with the way the bill lists prohibitions and secondly by stating that he agrees with Admiral Zumwalt to the extent that Congress should "not act too hastily in response to a series of unfortunate events and the abuse of power that preceded them. In Senator Wallop's opinion the congressional oversight process is working quite well to "take care of the real abuses." The Senator then asked the three witnesses to comment on "what appears to [be] a vast and impressive move away from human collection." In response, all three witnesses stressed the continued need for Humint.

--Senator Chafee attempted to summarize the witnesses testimony vis-a-vis S. 2525. According to Senator Chafee:

Admiral Zumwalt would not proceed with this legislation; Admiral Zumwalt added that he would like to see similar hearings like this in another year after the national debate has clarified our alternatives.

General Dougherty indicated some satisfaction with the legislation; General Dougherty added that in his opinion the congressional oversight, while fraught with security problems, "will lend to the objectivity of intelligence and to the accuracy of intelligence."

General Wilson added his own summary stating that after 30 years guidelines are needed, but warned that excessive reporting requirements as well as a lengthy list of proscriptions may be counterproductive.

--Senator Goldwater closed the hearing by stating that in his opinion the crux of the problem has been the misuse of the Intelligence Community by past Presidents; he advocated "build[ing] some kind of fence around the President's ability" to misuse intelligence.

Note: With this hearing the SSCI concluded its first series of hearings on S. 2525. The SSCI, since April 1978, has held about a dozen hearings, taking testimony from non-Government witnesses. The staff contemplates no further hearings for the next six weeks; the staff hopes to begin calling Administration witnesses sometime in the fall but to date no witness list or dates have been developed. While no formal hearings will be held in the immediate future, Agency discussions with SSCI staff about particular provisions in the bill will continue. In addition an SCC charter working-level group will continue to consider individual titles.

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